



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

MEMORANDUM

Date: March 31, 2016

To: Robert Best, Chairman, & Members, Planning Board

From: Jillian M. Harris, AICP, Planning and Zoning Administrator

Subject: **Shawn Farrell and Fieldstone Land Consultants, PLLC. (applicants) and Brett W. Vaughn Revocable Trust** – Review for reconsideration of a waiver for driveway slope part of the previous conditionally approved 3-lot subdivision. The parcel is located at 120, 122, & 124 Wilson Hill Road in the R-1 (Residential), and Aquifer Conservation Districts, and Wellhead Protection area. Tax Map 4A, Lot 004.

Background

Please see the January 12, 2016 Memo (attached) for additional background information on the conditionally approved subdivision. A 3-lot subdivision was conditionally approved by the Board for this parcel at the January 19, 2016 meeting. At that meeting the Board voted 7-0-0 to waive the requirements of Section 4.13.1(a) of the Subdivision Regulations regarding driveway slope (pending Fire Department approval). Since that time the Fire Department has voiced concern with the wording of the conditional waiver and is not comfortable being in a position to approve or deny waivers. Without Fire Department approval, the previous waiver becomes “denied.”

The applicant is back before the Board to ask for reconsideration of a waiver for driveway slope as part of the previous conditionally approved 3-lot subdivision. Section 4.13.1(a) states that “No driveway shall have a slope greater than 10%.” The applicant has provided a profile that shows the proposed driveway where a portion is at 12%. The applicant has also provided an exhibit plan that shows a driveway option that meets the 10% standard, but has additional wetland impacts due to a substantial amount of fill required on the downhill side of the driveway.

It is the position of DPW and CDD that the requirement in the subdivision regulations has merit and should only be waived after careful consideration of the board and a presentation by the applicant stating why the regulation cannot be met, with proper justification as required by the statute.

Completeness

Not applicable since this is an amendment to a conditionally approved plan.

Staff recommends that the Board reconsider the waiver of Section 4.13.1(a) and the condition placed on it previously and carefully considers whether the regulation cannot be met as presented by the applicant. Further, staff discourages the Board from requiring any “departmental” approvals as part of the waiver request. The Board should either vote to approve or deny all waiver requests based on the information available at that time (or continue the application to obtain more information).

Waivers

The applicant requests a waiver from Section 4.13.1(a) of the Subdivision Regulations for a driveway with slope greater than 10 percent.

Staff recommends that the Board vote with respect to the requested modified waiver utilizing the criteria from RSA 674:36:

- Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; **or**
- Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Recommendation

As reconsideration of the waiver for driveway slope is the only item pertinent to the hearing, the Board should re-affirm the same conditions of approval from the decision letter dated January 20, 2016, only eliminating the requirement from precedent condition #8.c, as applicable, depending on the Board's decision on the waiver.

Cc: Planning Board File
Correspondence

Ec: Brett W. Vaughn Revocable Trust, owner
Shawn Farrell, applicant
Chad E. Branon, P.E., Fieldstone Land Consultants, PLLC
Building Dept. Staff
Captain John Manuele, Merrimack Fire Department
Kyle Fox, PE, Deputy Director of Public Works/Town Engineer
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